IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 225 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYANTIBHAI GOVINDBHAI SOLANKI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 225 of 2000

PARTY-IN-PERSON for Petitioner No. 1

MR S J DAVE, APP for Respondent No. 1

MS SUNITA S MENON for Respondent No. 2

MR SHAKEEL A QURESHI for Respondent No. 2,3

RULE SERVED for Respondent No. 4

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 10/02/2003

ORAL JUDGEMENT

This is a Revision Application under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (for short, "the Code"), challenging an order dated 16/05/2000 recorded by the learned Judicial Magistrate (First Class) at Gandhinagar, in Court Inquiry Case No. 15 of 2000, under which the learned Magistrate directed the dismissal of the complaint of the present petitioner under Section 203 of the said Code.

2. It appears from the record that the present petitioner was the original complainant before the said Court in the said matter. He filed the aforesaid complaint against the three respondents who have been subsequently added as respondents in this Court. The said respondents will be referred to as, the concerned accused persons, for the purpose of convenience. The petitioner, present as party-in-person submits his affidavit-in-rejoinder, which is taken on record.

3. The present petitioner filed the aforesaid complaint against three accused persons for an offence punishable under Section 500 read with Section 34 and 114 IPC. The petitioner alleged in the complaint that he belongs to Scheduled Caste and that the first accused who was also in service along with the petitioner, was senior to him. That when promotion was required to be issued, the petitioner superseded the first accused for getting promotion in a Class II post. That, thereafter, the first accused filed certain representations to the Department, alleging that the petitioner had committed rape on the first accused in 1983. The said representation was made in 1997. On account of the said representation, the explanation of the petitioner was called for by the Department and therefore, the petitioner came to know about the said allegation. Therefore, he filed the aforesaid complaint before the said Court stating that false imputations have been made against the petitioner in the said complaint by the said three accused persons and thereby the said accused persons have intentionally defamed the petitioner and committed an offence punishable under Section 500 IPC.

4. On receiving the complaint the Court appears to have directed that the complaint be registered on Inquiry Register and inquiry be held.

5. Thereafter, the statement of the petitioner on oath was recorded and thereafter the trial court dismissed the complaint under section 203 of the said Code stating that no offence has been made out.

6. The petitioner felt aggrieved by the said order of the said court and therefore, he preferred the present Revision Application in which "Rule" was issued and in response to the service of notice of "Rule", Mr.S J Dave, learned APP has appeared on behalf of the State of Gujarat and Mr.Shakeel A Quereshi, learned advocate appeared on behalf of Respondent nos. 1 and 2. With respect to accused no. 3, though duly served, none appeared on his behalf. I have heard the learned advocates for the parties and have perused the papers.

7. It seems that the main grievance of the petitioner is that he was not given an opportunity to lead evidence and to produce and prove the documents from Government Department to show the nature and extent of defamatory statements made by the first accused, with the aid of the two other accused against the petitioner. He also states that if an opportunity was given to him, then he would have produced all those materials through the Government Department, which would show that the three accused persons are guilty for an offence punishable under Section 500 IPC.

8. Now it is well settled that when an order has been passed by the concerned Court of Judicial Magistrate (First Class) for holding an inquiry under Section 202 of the said Code, then, it is open to the complainant to produce all relevant materials in support of the averments made in the complaint.

9. In the present case, the main allegations of the petitioner are that the three accused persons have joined hands in making defamatory allegations against the petitioner and the said averments and statements have been made in writing addressed to the Government Department. Now, when the defamatory statements are allegedly made in such documents and when such documents are in the custody of the Government Department, then it would become the duty of the petitioner to get them produced on the record of the trial court in the said inquiry in order to substantiate his case, set out in the complaint. For the purpose of producing the said documents on the record of the said matter, it is always

open to the petitioner to submit an application requesting the Court to summon witnesses, named in the application with a direction to produce the materials sought to be produced from their custody. If such an application is made and if the Court is satisfied, then the Court has to issue witness summons to the persons named in the application, with a direction to produce the documents described in the application of the petitioner.

10. Naturally, when the witnesses summoned are served the concerned witnesses would go to the court and produce materials as stated in the summons and in the application of the petitioner. Thereafter, the Court concerned will be required to examine the said material, in order to find out as to whether an offence, as alleged in the complaint has been made out.

11. At the same time, if the court finds that some offence is made out, then it would be open to the Court concerned to register the complaint and issue appropriate process against the accused concerned. And, if the court finds that no offence is made out then in that case, it would be open to the Court concerned to dismiss the complaint under Section 203 of the Code.

12. In any event, when witnesses are cited in the complaint and when the petitioner desires to examine those witnesses then it becomes the duty and responsibility of the Court to issue witness summons to those witnesses as indicated hereinabove. In the present case, we find that the complaint is based on the allegations made in writing by the first accused in the company of the two other accused persons. Therefore, the allegations made in writing, as said by petitioner, to the Department concerned may be required to be proved by production of the said documents. Therefore, it was necessary for the court to issue summons to the witnesses.

13. The petitioner has made a grievance that the Court did not call for the records from the said Department. That an opportunity to get them produced on record was not given and that without giving him any opportunity to get them produced and proved, the Court has dismissed the complaint under Section 203 of the Code.

14. As stated above, even today the petitioner desires to get those documents produced on the record of the Court below. Therefore, when the petitioner states that he may be given an opportunity to lead evidence before the trial court, as to the existence of an offence against the accused persons then in that case, I am of the view that the trial court cannot be said to be on the correct side, by dismissing the complaint under Section 203 of the said Code, without providing the aforesaid opportunity to the petitioner. In my opinion, the petitioner deserves an opportunity to lead evidence before the court below as aforesaid.

15. I am of the opinion that proper procedure has not been properly followed by the trial court and it has seriously caused injustice to the petitioner, when the complaint has been dismissed outright under Section 203 of the code.

16. Therefore, with a view to legalize the procedure it would be in the fitness of things to exercise revisional jurisdiction under Section 397 read with Section 401 of the said code. This can be done by quashing and setting aside the impugned order and by directing the trial court to undertake further inquiry under Section 202 of the said Code. It would include the examination of witnesses and production of materials as may be requested by the petitioner before the said court. This would naturally not prejudice the defence of the contesting respondents, since the accused will come in picture only if and when the complaint is registered and process is issued against them. In other words, the process would be issued only on having satisfactory material on record. Again, if the petitioner fails to produce adequate material on record before the trial court, then it would be open to the trial court to pass appropriate orders according to law after hearing the petitioner.

17. In that view of the matter, it can be said that the impugned order of the trial court dismissing the complaint under Section 203 of the Code without affording the aforesaid opportunity of leading evidence at the stage of inquiry under Section 202 of the Code, is illegal, requiring this court to interfere with the said order by undertaking revisional jurisdiction under Section 397 read with Section 401 of the said Code.

18. For the foregoing reasons, this revision application is allowed. The impugned order dated 16/05/2000 recorded by the learned Judicial Magistrate, First Class at Gandhinagar in Court Inquiry Case No. 15 of 2000 dismissing the complaint of the present petitioner under Section 203 of the Code of Criminal Procedure, 1973 is ordered to be set aside.

19. The matter is remanded back to the trial court. The trial court shall naturally record the evidence of the petitioner and the witnesses. It would be open to the petitioner to submit applications to the trial court for summoning the witnesses with or without documents and, if such applications are made, then the trial court will naturally pass orders according to law, affording opportunity to the petitioner to lead evidence both oral and documentary.

20. After receiving the evidence as aforesaid, it would be open to the trial court to pass appropriate orders according to law. Rule is made absolute to the aforesaid extent.

(D. P. Buch, J.)

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